

DIRECTOR OF LANDS, PETITIONER, VS. HEIRS OF JUANA CAROLINO, NAMELY MACARIO, ZACARIAS AND FRANCISCA, ALL SUR-NAMED ABALOS, IGNACIO ABAYA, JUANA MINIANO AND COURT OF APPEALS, RESP...

G.R. No. 61598. December 12, 1985

Ponente: AQUINO, C.J.

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AQUINO, C.J.:

This is a controversy over Lot 3439 of the San Jose cadastre, Nueva Ecija located in Barrio Kita-Kita with an area of more than 28 hectares.

The heirs of Juana Carolino, in their petition dated August 28, 1967 to reopen Cadastral Case No. 9, alleged that Lot 3439 was adjudicated to Juana in 1925, that an order was issued for the issuance of a decree and that said decision and order are not available as shown in the certification dated August 9, 1967 of the branch clerk of court of the Court of First Instance of Cabanatuan City which reads (Annex A):

"This is to certify that in accordance with the Docket Book of Cadastral Lots kept in this Court, Lot No. 3439, Cad. Case No. 9, LRC Cad. Rec. No. 268 of the San Jose Cadastre was decided on May 18, 1925 and on December 15, 1925, an order was issued for the issuance of decree.

"It is further certified that copy of the said decision and order for the issuance of decree are not among our salvaged files.

"This certificate is issued upon request of Mrs. Francisca Abalos of San Jose, Nueva Ecija."

It may be noted that the name of Juana Carolino is not mentioned at all in the said certification. And yet her heirs rely on it as the evidence to prove that Lot 3439 was adjudicated to her forty-two years before the filing of their petition to reopen the cadastral proceeding.

Ignacio Abaya and Juana Miniano opposed the petition on the ground that Juana Carolino was not the adjudicatee, owner or possessor of Lot No. 3439; that the southern portion of Lot No. 3439, known as Lot No. 3439-A, had been adjudicated to Maria Espiritu who sold it to Ignacio Abaya in 1937; that Abaya had been in possession of said portion since then; that the rest of Lot 3439, designated as Lot No. 3439-B, had been declared public land; that because Dionisio Miniano, the father of Juana Miniano, and Macario Abalos were in actual possession of Lot No. 3439-B and they filed an application for patent therefor, the land was awarded to them in 1941.

On the other hand Benjamin Dumale, the original claimant of Lot No. 3439, alleged in his opposition that Lot No. 3439 was adjudicated to Maria Espiritu on May 18, 1925; that Maria sold the lot to him on August 12, 1967 and that neither Juana Carolino nor her heirs, nor Ignacio Abaya nor Juana Miniano had ever possessed any portion of Lot 3439.

After hearing, the trial court in its decision dated April 28, 1976 adjudicated (1) Lot No. 3439-A, with an area of 60,746 square meters, to Ignacio Abaya; (2) Lot No. 3439-B, with an area of 87,281 square meters, to Juana Miniano and (3) Lot No. 3439-C, with an area of 139,971 square meters, to the heirs of Juana Carolino.

The Director of Lands appealed. The Court of Appeals affirmed the trial court's decision. The Director appealed to this Court. Have the claimants proven their contentions? That is the issue.

The heirs of Juana Carolino, namely, Macario Abalos, Zacarias Abalos and Francisca Abalos-De Guzman, who presented a survey plan, SWO-12231, Exhibit D, for the entire Lot 3439, prepared in 1967, did not file any appellees' brief.

Their Exhibit D was not approved by the Director of Lands as required by section 1858 of the Revised Administrative Code and Presidential Decree No. 239. Therefore, it is not evidence in this cadastral proceeding. They did not present any tax declaration nor real estate tax receipts.

As noted by the Solicitor General, although their sole witness, Raymundo Tanchoco, visited the land four times since 1920, he did not see Juana Carolino nor her heirs cultivating the land or hauling palay therefrom (p. 72, Rollo).

The Solicitor General observes that oppositors Abaya and Miniano did not file any petition for the reopening of the cadastral case. Abaya's claim that he bought a portion of the land from Maria Espiritu, the alleged original owner, is not supported by any deed of sale. He filed an application for a free patent in 1950 for land located in Barrio Maañgol (Exh. 3-Abaya) but that in itself does not conclusively support his claim since no patent was issued.

Abaya paid the land taxes for the years 1970 to 1973. He did not pay the realty taxes for the prior years (p. 73, Rollo).

In Miniano's case, she presented a tax declaration dated February 23, 1970 or almost two years after she filed her opposition. She presented realty tax receipts for 1967 to 1970 but none for the years prior thereto.

The appellees failed to present clear, convincing and trustworthy evidence to substantiate their respective contentions that they and their predecessors-in-interest had possessed Lot 3439 en concepto de dueño or that it had been decreed in favor of Juana Carolino or Maria Espiritu about half a century ago. The lot must be presumed to be still a part of the public domain (*Manila Electric Company vs. Castro-Bartolome*, L-49623, June 29, 1982, 114 SCRA 799, 806).

WHEREFORE, the decision of the Appellate Court is reversed and set aside. Lot 3439 is declared to be still a part of the public domain. Appellees' claims are dismissed. No costs.

SO ORDERED.

Concepcion, Jr., (Chairman), Escolin, and Alampay, JJ., concur.

Abad Santos and Cuevas, JJ., no part.

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